



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

David Bauer, Treasurer  
Denham for Congress  
2150 River Plaza Drive, #150  
Sacramento, CA 95833

**AUG 20 2015**

RE: MUR 6851

Dear Mr. Bauer:

On July 9, 2014, the Federal Election Commission notified Denham for Congress and you in your official capacity as treasurer (collectively, the "Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On August 13, 2015, based upon the information contained in the complaint, and information provided by the Committee, the Commission decided to dismiss the allegations that the Committee violated the Act and Commission regulations. Accordingly, the Commission closed its file in this matter on August 13, 2015.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Ruth Heilizer, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

General Counsel

A handwritten signature in black ink, appearing to read "Jeff S. Jordan", is written over the typed name.

BY: Jeff S. Jordan  
Assistant General Counsel  
Complaints Examination and  
Legal Administration

Enclosure  
Factual and Legal Analysis

## FACTUAL AND LEGAL ANALYSIS

MUR 6851

**Tuff Boy Sales, Inc.**

This matter was generated by a complaint filed by Michael J. Barkley (“Barkley”)<sup>1</sup> on July 4, 2014, alleging violations of the Federal Election Campaign Act of 1971, as amended (the “Act”)<sup>2</sup> and Commission regulations by Denham for Congress and David Bauer in his official capacity as a member of the committee (collectively the “Committee”), Lucille Harris, William R. Harris, and Tuff Boy Sales, Inc. (“Tuff Boy Sales”). It was scored as a relatively low-rated matter under the Enforcement Priority System, a system by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

The Complaint alleges that during the 2012 campaign, a sign supporting Denham's sign was erected in the equipment yard of Tuff Boy Sales. Compl. at 2-3. According to the Complaint, the sign, which displayed the phrase "Jeff [flag graphic] Denham U.S. Representative," read the following statement: "Paid for by William and Lucille Harris and authorized by Jeff Denham for Congress." *Id.* at 2; *see also id.*, Ex. A (photograph of sign). The Complaint also notes the sign, and another Denham campaign sign located on the same lot, *see id.*, Ex. C

<sup>2</sup> On September 1, 2014, the Act was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

1 (photograph of second sign)<sup>3</sup> could have been viewed from a heavily-travelled freeway for an  
2 extended period of time and, thus, provided a valuable in-kind contribution to the Committee. *Id.* at  
3 3. The Complaint alleges that the Committee did not disclose an in-kind contribution from  
4 Lucille Harris or “anyone else from Tuff Boy” related to this sign on the Committee’s reports. *Id.*  
5 at 2. Accordingly, the Complaint maintains that the signs may have constituted an illegal in-kind  
6 contribution from Tuff Boy Sales, in violation of 52 U.S.C. § 30118(a) (formerly 2 U.S.C.  
7 § 441b(a)). *Id.* Alternatively, the Complaint posits that if an unknown individual owned the  
8 property and placed the signs there, he or she may have made a contribution exceeding \$2,500, the  
9 2012 per-election contribution limit. *See* 52 U.S.C. §§ 30116(a)(1)(A) and 30116(f) (formerly  
10 2 U.S.C. §§ 441a(1)(a) and 441a(f)).

11 The Committee responds that the property in question was owned by individuals, one of  
12 whom “posted [the sign] with the consent of the other owners.” Committee Resp. at 1. The  
13 Committee further contends that its “purchase of the sign” was disclosed on the “appropriate”  
14 financial disclosure reports. *Id.*

15 Lucille Harris filed a sworn Declaration<sup>4</sup> asserting that the property at issue is “owned and  
16 operated by the Mossdale group,” which “holds title in individual names and in the name of a  
17 trust.”<sup>5</sup> Lucille Harris Declaration (“Lucille Harris Decl.”) at ¶ 7. Mrs. Harris adds that the specific  
18 “site whereon the political banners are located has no Tuff Boy affiliation.” *Id.* at ¶ 6.

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<sup>3</sup> Only the words “Jeff Denham” are legible on the second sign, *see* Ex. C.

<sup>4</sup> Martin Harris, the chief executive officer of Tuff Boy Sales who is Mrs. Harris’s son, filed a Response on behalf of the company, which attaches and adopts the Declaration and documents previously filed by Mrs. Harris. Martin Harris Resp. at 1.

<sup>5</sup> Mrs. Harris elaborates that she and Mr. Harris, who formerly owned the property, transferred ownership to their children, Martin Harris, Marcia Perkins, and Melissa King, on January 1, 2011, who subsequently transferred their

Mrs. Harris also declares that the “Harris parties” made no contributions to the Committee, aside from “donations from Harris individuals,” *id.* at ¶ 11, and she attaches documentation for three contributions to the Committee. *Id.*, Ex. 3. The first page of documentation includes what appears to be a pledge card bearing the name Martin Harris and a check for \$500, dated March 23, 2012, from the account of “William R. Harris” and “Lucille Harris.” *Id.*, Ex. 3 at 1.<sup>6</sup> The second page includes a check for \$500, dated October 22, 2012, from the account of “W/L Harris Properties, LLC” and attributed by the Committee to Lucille Harris. *Id.*, Ex. 3 at 2.<sup>7</sup> The third includes a note from Lucille Harris and a check for \$200, dated April 1, 2013, from the account of “Lucille Harris S. Trust.” *Id.*, Ex. 3 at 3.<sup>8</sup>

In addition to these three contributions, a review of the Committee’s financial disclosure reports reveals a contribution of \$454.06 from Martin Harris for “signs,” dated September 14, 2012,

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interests to a trust, entitled the “Harris Irrevocable Trust” (“HIRT”). Lucille Harris Decl. at ¶ 3. The property is currently owned by a partnership called the “Mosssdale Group” (“Mosssdale”), which holds title in the name of three individuals, Kirsten Moorhead, Keeley Duncan, and Connie Liberato, and also in the name of the HIRT. *Id.*; *see also id.*, Ex. 1 (copy of 2014 tax return for “Mosssdale Farms,” which seems to be the same entity as the “Mosssdale Group,” and letters addressed to partners Moorhead, Duncan, Liberato, and the HIRT). *See also id.*, Ex. 2 (document detailing transfers of ownership of the property at issue). According to Mrs. Harris, a political sign supporting Congressman Denham and two signs supporting non-federal candidates are currently on the property and will be moved to adjacent privately-owned property to comply with local election rules. Lucille Harris Decl. at ¶ 9.

<sup>6</sup> During the course of reviewing the materials submitted by Respondents, the Commission observed that the Committee attributed a contribution to one person whose name was not listed on the printed check as an account holder. Moreover, it appears that a different person may have signed the check. It is unclear whether this apparent discrepancy could be easily explained and raises no issue or indicates a potential legal issue, such as a reporting error or a contribution in the name of another. Because the contribution at issue is relatively small and the facts before the Commission are inconclusive, the Commission does not pursue the issue.

<sup>7</sup> *See* Committee’s amended 2012 Post-General Report, filed on May 13, 2013, at 63. Contributions by limited liability companies (“LLCs”) are permissible if they elect to be treated as partnerships for tax purposes. *See* 11 C.F.R. § 110.1(g). The Harris LLC contribution is followed by a memo entry attributing the contribution to Lucille Harris, who appears to be a member/partner. Committee’s amended 2012 Post-General Report, at 63.

<sup>8</sup> The signature on the check is illegible, but appears to match the signature from the first check. The Committee attributed the contribution to Lucille Harris. *See* Committee’s amended 2013 July Quarterly Report, filed on September 17, 2013, at 22.

1 and described by the Committee as both a “contribution” and “expenditure,” but without an “in-  
2 kind” notation.<sup>9</sup>

3 **B. Legal Analysis**

4 The Act and Commission regulations define “contribution” as any “gift, subscription, loan . .  
5 . or anything of value made by any person for the purpose of influencing any election for Federal  
6 office.” 52 U.S.C. § 30101(8)(A)(i) (formerly 2 U.S.C. § 431(8)(A)(i)); *see also* 11 C.F.R.  
7 § 100.52(a). “Anything of value” includes all in-kind contributions, including the provision of  
8 goods or services without charge or at a charge that is less than the usual and normal charge.  
9 11 C.F.R. § 100.52(d)(1). Itemized in-kind contributions must be reported as both itemized  
10 contributions and itemized expenditures on the same report, *see* 11 C.F.R. § 104.13(a)(1) and (2);  
11 *see also* Advisory Op. 2004-36 at 2-3, and should be labeled “in-kind.” *See* Instructions for FEC  
12 Form 3 and Related Schedules, available at <http://www.fec.gov/pdf/forms/fecfrm3i.pdf>, at 10, 13.

13 The Committee’s Response and its 2012 October Quarterly Report, which both indicate that  
14 Martin Harris paid for the sign, appear to be in conflict with the sign’s disclaimer, which indicates  
15 that William and Lucille Harris paid for the sign.<sup>10</sup> Therefore, the Committee may have violated

<sup>9</sup> *See* Committee’s amended 2012 October Quarterly Report, filed on April 30, 2013, at 22 and 126.

<sup>10</sup> Whenever any person makes a disbursement for a public communication that expressly advocates the election or defeat of a clearly identified candidate, he or she must include a disclaimer. 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441d(a)); *see also* 11 C.F.R. § 110.11(a)(2), (b). Public communications authorized by a candidate, an authorized committee of a candidate, or an agent of either but paid for by another person, must clearly state that the communications were paid for by such person but authorized by the political committee. 52 U.S.C. § 30120(a)(2) (formerly 2 U.S.C. § 441d(a)(2)); *see also* 11 C.F.R. § 110.11(b)(2). Under Commission regulations, a communication expressly advocates the election or defeat of a clearly identified federal candidate if it uses “phrases” such as “vote for the President,” “re-elect your Congressman,” “vote against Old Hickory,” or “defeat” accompanied by a picture of one or more candidate(s), among other enumerated examples, or “communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc., which say “‘Nixon’s the One,’ ‘Carter ’76,’ ‘Reagan/Bush’ or ‘Mondale!’” 11 C.F.R. § 100.22(a); *see also* *Buckley v. Valeo*, 424 U.S. 1, 44 n.52 (1976).

1 52 U.S.C. § 30104(b)(2)(A) (formerly 2 U.S.C. § 434(b)(2)(A)). Alternatively, the disclaimer on  
2 the sign may have been inaccurate, in violation of 52 U.S.C. § 30120(a)(2) (formerly 2 U.S.C.  
3 § 441d(a)(2)). Regardless, the amount at issue appears to be *de minimis*. Therefore, the  
4 Commission dismisses the allegations that Denham for Congress and David Bauer in his official  
5 capacity as treasurer, Lucille Harris, and William R. Harris violated the Act and Commission  
6 regulations related to this matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985). Furthermore, the  
7 Commission finds no reason to believe that Tuff Boy Sales, Inc. violated the Act or Commission  
8 regulations as alleged in this matter.  
9